

**SENATE BILL**

**No. 20**

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**Introduced by Senator Yee**

September 21, 2010

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An act to add Sections 17060 and 23603 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 20, as introduced, Yee. Income taxes: business tax incentives: reporting information and recapture.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits, deductions, exclusions, exemptions, and other tax benefits with respect to the taxes imposed by those laws.

This bill would require a taxpayer, as described, doing business in California that claims a business tax incentive, as provided, to submit to the Franchise Tax Board on the original return specified information, including the number of employees employed by the taxpayer in the state.

The bill would also require, in cases in which a taxpayer has a disqualifying event resulting in a net decrease in the number of full-time employees for a business tax incentive added by statute enacted on or after January 1, 2011, the business tax incentive to be recaptured, and the taxable amount computed in accordance with specified procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 17060 is added to the Revenue and  
2     Taxation Code, to read:

3     17060. (a) Notwithstanding any other provision of this part,  
4     for taxable years beginning on or after January 1, 2011, a taxpayer  
5     doing business in this state that claims any business tax incentive  
6     shall annually include on the timely filed original return, in the  
7     form and manner as required by forms and instructions prescribed  
8     by the Franchise Tax Board, the number of full-time, part-time,  
9     and temporary employees, as defined, employed by the taxpayer  
10    in the state for the current and preceding taxable years.

11    (b) (1) Notwithstanding any other law, for any business tax  
12    incentive that is allowed by an act that is enacted on or after  
13    January 1, 2011, if the taxpayer has a disqualifying event occur  
14    before the close of the recapture period, the business tax incentive  
15    shall be subject to recapture as specified in subdivision (e).

16    (2) For purposes of this section, “disqualifying event” means a  
17    net decrease, as determined under subdivision (c), in the average  
18    number of full-time equivalent employees, calculated as of the last  
19    day of the current taxable year.

20    (3) For purposes of this section, “recapture period” shall, with  
21    respect to the amount of any business tax incentive that reduces a  
22    taxpayer’s taxable income or “net tax” in the current taxable year,  
23    be the first full taxable year beginning after the close of the taxable  
24    year in which the business tax incentive reduces either the  
25    taxpayer’s taxable income or “net tax,” as defined in Section 17039,  
26    and the four succeeding taxable years.

27    (4) For purposes of this subdivision, a “business tax incentive”  
28    means a credit, deduction, exclusion, exemption, or any other tax  
29    benefit provided by the state added by an act that is enacted on or  
30    after January 1, 2011, with the purpose of creating new jobs in the  
31    state, and allowed to taxpayers engaged in or carrying on any trade,  
32    business, profession, vocation or calling, or commercial activity  
33    in the state.

34    (c) (1) The net decrease in full-time equivalent employees in  
35    the state shall be determined, on and after January 1, 2014, on a  
36    full-time equivalent basis by subtracting from the amount  
37    determined in subparagraph (A) the amount determined in  
38    subparagraph (B).

1 (A) The total number of full-time equivalent employees in the  
2 state employed in the three preceding taxable years by the taxpayer  
3 and by any trade or business acquired by the taxpayer during the  
4 current taxable year, divided by three.

5 (B) The total number of full-time equivalent employees  
6 employed in the state in the current taxable year by the taxpayer  
7 and by any trade or business acquired by the taxpayer during the  
8 current taxable year.

9 (C) For purposes of this paragraph, employees in the state who  
10 are employed in any trade or business sold by a taxpayer shall be  
11 excluded in the determination of the amounts in subparagraphs  
12 (A) and (B).

13 (2) “Full-time equivalent” means either of the following:

14 (A) In the case of a full-time employee paid hourly qualified  
15 wages, “full-time equivalent” means the total number of hours  
16 worked for the taxpayer by the employee (not to exceed 2,000  
17 hours per employee) divided by 2,000.

18 (B) In the case of a salaried full-time employee, “full-time  
19 equivalent” means the total number of weeks worked for the  
20 taxpayer by the employee divided by 52.

21 (3) All employees of the trades or businesses that are treated as  
22 related under either Section 267, 318, or 707 of the Internal  
23 Revenue Code shall be treated as employed by a single taxpayer.

24 (d) For purposes of this section, all of the following definitions  
25 apply:

26 (1) “Full-time employee” means an employee who works an  
27 average of 35 hours in a week, calculated monthly.

28 (2) “Part-time employee” means an employee who works less  
29 than an average of 35 hours in a week, calculated monthly.

30 (3) “Temporary employee” means an employee who works less  
31 than 120 days per year.

32 (e) (1) In the case of a disqualifying event, there shall be added  
33 to taxable income, or the “net tax” as defined in Section 17039,  
34 as the case may be, of the taxpayer for the taxable year in which  
35 the disqualifying event occurs, the recapture amount computed  
36 pursuant to subparagraph (A) and the interest amount computed  
37 pursuant to subparagraph (B).

38 (A) The recapture amount shall be computed by multiplying  
39 the total amount of the business tax incentive allowed to the  
40 taxpayer in the current taxable year and prior taxable years

1 excluding the amounts previously recaptured, by a fraction, the  
2 numerator of which is the net decrease in full-time equivalent  
3 employees as determined under subdivision (c), and the  
4 denominator of which is the cumulative increase in the full-time  
5 equivalent employees calculated from the last day of the first  
6 taxable year the business tax incentive was claimed on the return  
7 to the last day of the taxable year immediately preceding the  
8 taxable year of the disqualifying event.

9 (i) If the denominator of the fraction computed under  
10 subparagraph (A) equals zero or a negative amount, 100 percent  
11 of the business tax incentive shall be subject to recapture.

12 (ii) If the fraction computed under subparagraph (A) is greater  
13 than one, not more than 100 percent of the business tax incentive  
14 shall be subject to recapture.

15 (B) The interest amount shall be computed using the adjusted  
16 annual rate established by Section 19521 from the due date of the  
17 return for each taxable year in which the business tax incentive  
18 reduced a taxpayer's taxable income or "net tax" to the date of the  
19 payment of additional tax resulting from the application of this  
20 subdivision.

21 (2) The amount of recapture computed under this subdivision  
22 shall be first applied against the applicable business tax incentive  
23 that reduced income or "net tax" for the earliest taxable year, and  
24 then to the succeeding taxable year and thereafter, and if there is  
25 any excess amount of recapture computed under this subdivision  
26 that exceeds the amount of business tax incentives that reduced a  
27 taxpayer's taxable income or "net tax" in a prior taxable year, then  
28 such excess shall be applied against remaining carryovers of such  
29 business tax incentives, if any.

30 (3) The recapture amount imposed under this section shall be  
31 in addition to any other recapture amounts imposed under this part.

32 (f) This section shall not apply to a taxpayer with 25 or fewer  
33 employees and with net business income of less than five hundred  
34 thousand dollars (\$500,000) for the taxable year. For purposes of  
35 this subdivision, business income means:

36 (1) Income from a trade or business, whether conducted by the  
37 taxpayer or by a passthrough entity owned directly or indirectly  
38 by the taxpayer. For purposes of this paragraph, the term  
39 "passthrough entity" means a partnership or an "S" corporation.

40 (2) Income from rental activity.

1 (3) Income attributable to a farming business.

2 (g) Nothing in this section shall limit the authority of the  
3 Franchise Tax Board to audit the information provided by the  
4 taxpayer pursuant to subdivision (a).

5 (h) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
6 Division 3 of Title 2 of the Government Code shall not apply to  
7 any standard, criterion, procedure, determination, rule, notice, or  
8 guideline established or issued by the Franchise Tax Board  
9 pursuant to subdivision (a).

10 (i) The amount of the understatement of tax for the taxable year  
11 that is attributable to the disallowance or recapture of a business  
12 tax incentive, as defined in subdivision (b), shall be excluded from  
13 the calculation of any penalty imposed under Part 10 (commencing  
14 with Section 17001) and Part 10.2 (commencing with Section  
15 18401).

16 SEC. 2. Section 23603 is added to the Revenue and Taxation  
17 Code, to read:

18 23603. (a) Notwithstanding any other provision of this part,  
19 for taxable years on or after January 1, 2011, a taxpayer doing  
20 business in the state that claims any business tax incentive shall  
21 annually include on the timely filed original return, in the form  
22 and manner as required by forms and instructions prescribed by  
23 the Franchise Tax Board, the number of full-time, part-time, and  
24 temporary employees, as defined, employed by the taxpayer in the  
25 state for the current and preceding taxable years.

26 (b) (1) Notwithstanding any other law, for any business tax  
27 incentive that is allowed by an act that is enacted on or after  
28 January 1, 2011, if the taxpayer has a disqualifying event, as  
29 defined, occur before the close of the recapture period, the business  
30 tax incentive shall be subject to recapture as specified in  
31 subdivision (e).

32 (2) For purposes of this section, “disqualifying event” means a  
33 net decrease, as determined under subdivision (c), in the average  
34 number of full-time equivalent employees, calculated as of the last  
35 day of the current taxable year.

36 (3) For purposes of this section, “recapture period” shall, with  
37 respect to the amount of any business tax incentive that reduces a  
38 taxpayer’s net income or “tax” in the current taxable year, be the  
39 first full taxable year beginning after the close of the taxable year  
40 in which the business tax incentive reduces either the taxpayer’s

1 net income or “tax,” as defined in Section 23036, and the four  
2 succeeding taxable years.

3 (4) For purposes of this subdivision, a “business tax incentive”  
4 means a credit, deduction, exclusion, exemption, or any other tax  
5 benefit provided by the state added by an act that is enacted on or  
6 after January 1, 2011, with the purpose of creating new jobs in the  
7 state, and allowed to taxpayers engaged in or carrying on any trade,  
8 business, profession, vocation or calling, or commercial activity  
9 in this state.

10 (c) (1) The net decrease in full-time equivalent employees in  
11 the state shall be determined, on and after January 1, 2014, on a  
12 full-time equivalent basis by subtracting from the amount  
13 determined in subparagraph (A) the amount determined in  
14 subparagraph (B).

15 (A) The total number of full-time equivalent employees  
16 employed in the three preceding taxable years by the taxpayer and  
17 by any trade or business acquired by the taxpayer during the current  
18 taxable year, divided by three.

19 (B) The total number of full-time equivalent employees  
20 employed in the state in the current taxable year by the taxpayer  
21 and by any trade or business acquired by the taxpayer during the  
22 current taxable year.

23 (C) For purposes of this paragraph, employees in the state who  
24 are employed in any trade or business sold by a taxpayer shall be  
25 excluded in the determination of the amounts of subparagraphs  
26 (A) and (B).

27 (2) “Full-time equivalent” means either of the following:

28 (A) In the case of a full-time employee paid hourly qualified  
29 wages, “full-time equivalent” means the total number of hours  
30 worked for the taxpayer by the employee (not to exceed 2,000  
31 hours per employee) divided by 2,000.

32 (B) In the case of a salaried full-time employee, “full-time  
33 equivalent” means the total number of weeks worked for the  
34 taxpayer by the employee divided by 52.

35 (3) All employees of the trades or businesses that are treated as  
36 related under either Section 267, 318, or 707 of the Internal  
37 Revenue Code shall be treated as employed by a single taxpayer.

38 (d) For purposes of this section, all of the following definitions  
39 apply:

1 (1) “Full-time employee” means an employee who works an  
2 average of 35 hours in a week, calculated monthly.

3 (2) “Part-time employee” means an employee who works less  
4 than an average of 35 hours in a week, calculated monthly.

5 (3) “Temporary employee” means an employee who works less  
6 than 120 days per year.

7 (e) (1) In the case of a disqualifying event, there shall be added  
8 to net income, or the “tax,” as defined in Section 23036, as the  
9 case may be, of the taxpayer for the taxable year in which the  
10 disqualifying event occurs, the recapture amount computed  
11 pursuant to subparagraph (A) and the interest amount computed  
12 pursuant to subparagraph (B).

13 (A) The recapture amount shall be computed by multiplying  
14 the total amount of the business tax incentive allowed to the  
15 taxpayer in the current taxable year and prior taxable years  
16 excluding the amounts previously recaptured, by a fraction, the  
17 numerator of which is the net decrease in full-time equivalent  
18 employees as determined under subdivision (c), and the  
19 denominator of which is the cumulative increase in the full-time  
20 equivalent employees calculated from the last day of the first  
21 taxable year the business tax incentive was claimed on the return  
22 to the last day of the taxable year immediately preceding the  
23 taxable year of the disqualifying event.

24 (i) If the denominator of the fraction computed under  
25 subparagraph (A) equals zero or a negative amount, 100 percent  
26 of the business tax incentive shall be subject to recapture.

27 (ii) If the fraction computed under subparagraph (A) is greater  
28 than one, not more than 100 percent of the business tax incentive  
29 shall be subject to recapture.

30 (B) The interest amount shall be computed using the adjusted  
31 annual rate established by Section 19521 from the due date of the  
32 return for each taxable year in which the business tax incentive  
33 reduced a taxpayer’s net income or “tax” to the date of the payment  
34 of additional tax resulting from the application of this subdivision.

35 (2) The amount of recapture computed under this subdivision  
36 shall be first applied against the applicable business tax incentive  
37 that reduced net income or “tax” for the earliest taxable year, and  
38 then to the succeeding taxable year and thereafter, and if there is  
39 any excess amount of recapture computed under this subdivision  
40 that exceeds the amount of business tax incentives that reduced a

1 taxpayer's net income or "tax" in a prior taxable year, then such  
2 excess shall be applied against remaining carryovers of such  
3 business tax incentives, if any.

4 (3) The recapture amount imposed under this section shall be  
5 in addition to any other recapture amounts imposed under this part.

6 (f) (1) In the case of any business tax incentive that is allowed  
7 to be sold, assigned, or otherwise transferred under the provisions  
8 of this part to another taxpayer, any such sale, assignment, or other  
9 transfer shall only be valid if the seller or assignor expressly agrees,  
10 and continues, to provide to the buyer or assignee and the Franchise  
11 Tax Board, in the form and manner specified by the Franchise Tax  
12 Board, any necessary information to calculate whether a  
13 disqualifying event has occurred with respect to the seller or  
14 assignor under the rules of this section.

15 (2) In the case where a disqualifying event has occurred under  
16 this section, the buyer or assignee shall be required to include in  
17 its net income or "tax" the amount of any required recapture.

18 (3) The rules of this subdivision shall apply to any business tax  
19 incentive that is sold, assigned, or otherwise transferred under the  
20 provisions of this part, notwithstanding any other provision of this  
21 part to the contrary.

22 (4) Notwithstanding any other provision of law, if a seller or  
23 assignor fails to satisfy the reporting requirements of this  
24 subdivision, then a notice of proposed deficiency assessment  
25 attributable to the business tax incentive with respect to which the  
26 reporting requirements were not satisfied may be mailed to the  
27 buyer or assignee within four years from the date on which the  
28 reporting requirements are satisfied by the seller or assignor.

29 (g) This section shall not apply to a taxpayer with 25 or fewer  
30 employees and with income subject to tax under this part of less  
31 than five hundred thousand dollars (\$500,000) for the taxable year.

32 (h) Nothing in this section shall limit the authority of the  
33 Franchise Tax Board to audit the information provided by the  
34 taxpayer pursuant to subdivision (a).

35 (i) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
36 Division 3 of Title 2 of the Government Code shall not apply to  
37 any standard, criterion, procedure, determination, rule, notice, or  
38 guideline established or issued by the Franchise Tax Board  
39 pursuant to subdivision (a).



1 (j) The amount of the understatement of tax for the taxable year  
2 that is attributable to the disallowance or recapture of a business  
3 tax incentive, as defined in subdivision (b), shall be excluded from  
4 the calculation of any penalty imposed under Part 10.2  
5 (commencing with Section 18401) and Part 11 (commencing with  
6 Section 23001).

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